

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application and for finding the previous amendment persuasive.

The amendments set forth herein serve to narrow the issues surrounding the instant Applications and would place the claims in better form for appeal. The Applicants respectfully request that the amended claims be entered and allowed, or entered for purposes of appeal.

Claim 1 has been amended to incorporate the subject matter of claims 2, 3 and 8, which have been canceled, without prejudice. Claim 9 has been amended to specify that the product requires heating in an aqueous medium or steam before consumption. Independent Claims 1 and 9 now emphasize that the invention is directed to a pasta product, by requiring that the product be rehydratable or deep frozen and requires heating in an aqueous medium or steam before consumption. This is in direct contrast to other cereals or confectionary products and any art relating thereto.

Care has been taken not to introduce any new matter.

The Present Invention

The present invention relates to networks of pasta can be prepared by extrusion, which are used for filled pasta, i.e., *the network of pasta partially covering a filling material*. Such filled pasta may be particularly suitable for *dry/instant rehydratable* or *deep frozen applications*. The inventive process allows for macropores to be formed, which can improve rehydration, heating up, and thawing of pasta particles. *In other words, the network comprises open space divided by filamentous elements of pasta.* Such pasta networks may extend over considerable distances, and still have individual parts which are sufficiently thin for quick cooking purposes. *The holes in the network allow quick access of water to the filling, which is advantageous for quick rehydration in dry applications and quick cooking in applications where the filling need to be exposed to hot/boiling water for sufficient time.* As stated at page 4 of the Specification, the present invention does not relate to confectionary products.

The Claims Are Not Obvious Under 35 USC § 103

Claims 1-3, 7-14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Burwell, et al. (U.S. Pat. No. 5,126,157) in view of Mercer, et al. (GB 1,604,586) and Cuperus (U.S. Pat. No. 5,693,351).

Burwell, et al., disclose edible products having a lattice structure made by extruding an edible material into discrete arrays of essentially parallel filaments. According to the Office Action, the product comprises two or more for example at least four superimposed pairs of arrays of essentially parallel filaments.; The angle between superimposed arrays of parallel filaments may be as much as 90°C, but preferably less than 30°C (col. 4, lines 6-16). ; The filaments may be of cooked or cookable pasta.

The Office Action admits that Burwell et al. fail to disclose a network with a regular repeating pattern, but, according to the Office Action, this would be an expected characteristic because the filaments are parallel and comprise of alternate superimposed arrays (col. 4, lines 8-9).

With regard to claim 7, the Office action admits that Burwell et al. fail to disclose the filling material, however Cuperus is cited for teaching filled pasta (col 3, lines 7-9). Further, *Burwell, et al., and Cuperus* fail to disclose hard wheat flour/semolina from durum wheat. The Office Action admits that Burwell et al. fail to disclose a rehydratable or deep frozen product. Cuperus is cited for disclosing a filled pasta product that is rehydratable (col. 2, lines 19-27).

The many deficiencies of Burwell et al., discussed above, are not cured by Cuperus. While Cuperus refers to a very much similar problem (how to achieve quicker rehydration of the filling in case of dehydrated filled pasta products), Cuperus takes a *different* approach of making a hole by not sealing the whole edge of a pasta leaf or not completely crimping the pasta leaves. In contrast, the approach according to the present invention is to manufacture the pasta envelope of a web-like material, where *the network of pasta partially covers a filling material*. The present envelope material enables the manufacture of a pasta envelope with a

lattice having many more holes, or *macropores*, and thus providing better rehydration than through the few holes in *pasta leaves* provided by Cuperus. Consequently, the present invention provides a superior approach to that of Cuperus. Certainly, the method claim 9 and its dependent claims are not obvious over Burwell et al. in view of Cuperus, and Applicants respectfully submit that none of the claims are obvious over Burwell et al. in view of Cuperus.

With regard to claims 9-10, the Office Action admits that *Burwell, et al.* fail to disclose the process for preparing a pasta product in a network or mesh-like structure by extrusion, and the number of openings between the concentric elements. Additionally, Burwell, et al. fail to disclose the pasta content. *Applicants would add that Burwell et al. fails to disclose co-extruding the pasta dough and the filling (and so does Mercer et al.). Instead, filling is introduced onto the formed shell (see Claims 2 and 19).* Mercer, et al. is applied to teach a composite food product prepared by extruding an edible material through die orifices so as to produce a tube whose wall is composed of a net having mesh strands and intersections which are integrally formed; The net can be formed by feeding edible material through die orifices defined between a pair of die members of which at least one is rotatable or oscillatable relative to the other to produce a tube net.; By applicant's own prior art admission that networks may be suitably prepared by techniques known in the art of textile processing, plastic processing and also food processing; *Cuperus teaches a filled pasta product wherein the pasta is made using flour/semolina obtained by grinding grains of cereals such as hard wheat (col. 2, lines 43-47), the product is heated at a temperature of 70-90 C for 3-5 minutes (col. 2, lines 22-26).*; It would be obvious to one of ordinary skill in the art to modify the teachings of Burwell, et al., with Mercer, et al. in order to prepare a filled net-like pasta product using extrusion.

Applicants respectfully traverse. It would not be obvious to modify the teachings of Burwell, et al., with Mercer, et al. in order to prepare a filled net-like pasta product using extrusion, because the two references are not combinable, since Mercer et al. has nothing to do with pasta (i.e. nothing to do with pasta that comprised hard wheat flour and hard wheat semolina from durum wheat, and nothing to do with rehydratable or frozen pasta that is heated in an aqueous medium or steam prior to consumption). *Instead, Mercer et al. is directed to finished confectionary products or foods (see col. 4, lines 1-9 and Examples at lines 25-40; claim 36), even though they may include savory fillings as well as nougat – i.e., foods like*

caramel and chocolate. While **Applicants** have stated that extrusion techniques have been used with other materials, there is no suggestion in either Burwell et al. or in Mercer et al. to use lattice extrusion for pasta. Cuperus et al. is simply directed to conventional pasta and adds nothing to render claim 9 obvious, as Applicants do not dispute the existence of conventional pasta.

With regard to claim 11, according to the Office Action, Burwell et al. disclose that the lattice structure may contain a filling (col. 4, lines 1-5). However, Applicants respectfully submit, and the Office Action admits with regard to claim 12, that Burwell et al. fails to disclose co-extruding the pasta dough and the filling. Mercer et al. are cited for an extruded net product with an extruded filling. However, again, *while each the tube and the filling of Mercer may be extruded, co-extrusion* is not disclosed. Moreover, Mercer relates to *confectionary or other non-analogous products*, that are not deep frozen and do not require rehydration in aqueous medium or steam. There is no suggestion in any of the cited references regarding co-extrusion, when such suggestion is required to make a *prima facie* case of obviousness. The invention as a whole is not obvious over the bits of pieces of unrelated references that are cited.

The dependent claims, including the process claims 13 and 14 are not obvious because the independent claims are not obvious, as discussed above.

There Is No Suggestion or Motivation to Combine the References

The Office Action has combined Burwell et al. with Cuperus and/or Mercer et al. and has concluded that the claimed invention is obvious. Even if it was not clear prior to the present Amendment, it is now clear that there is no motivation to combine the references. Some teaching, suggestion, or incentive supporting combination of references must be shown in order to prove obviousness. In re Gaiger, 815 F.2d 686 (Fed. Cir. 1987); ACS Hospital Systems, Inc. v. Montefiore Hospital, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

An obviousness rejection is proper only when “the subject matter as a whole would have been obvious at the time the invention was made ...” (emphasis added). 35 U.S.C. 103. Applicants respectfully submit that the Office Action has improperly chosen certain aspects of

one reference and combined them with aspects of other references, without showing where the motivation is to combine them to come up with the subject matter of the present invention as a whole, within the meaning of 35 U.S.C. 103. Applicants submit that the pending claims are not obvious over the cited references, under 35 U.S.C. 103, especially in view of the present Amendment. Reconsideration and withdrawal of the rejections is respectfully requested.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

/Ellen Plotkin/

Ellen Plotkin
Registration No. 36,636
Attorney for Applicant(s)

EP:ss

201-894-2253